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DEPARTMENT OF TRANSPORTATION

Pipeline and Hazardous Materials Safety Administration

49 CFR Part 190

[Docket No. PHMSA-2016-0010; Amdt. No. 190-17]

RIN-2137-AF16

Pipeline Safety: Inflation Adjustment of Maximum Civil Penalties

AGENCY: Pipeline and Hazardous Materials Safety Administration (PHMSA),
Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The Pipeline and Hazardous Materials Safety Administration (PHMSA) is revising references in its regulations to the maximum civil penalties for violations of Federal pipeline safety laws, or any PHMSA regulations or orders issued thereunder. Under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990, Federal agencies are required to adjust their civil monetary penalties effective January 15, 2017, and annually thereafter, to account for changes in inflation.

PHMSA finds good cause to amend the regulations related to civil penalties without notice or opportunity for public comment. Advance public notice is unnecessary for the reasons described in the **SUPPLEMENTARY INFORMATION** section.

DATES: The effective date of this final rule is **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Ahuva Battams, Attorney-Advisor, Pipeline Safety Division, Office of Chief Counsel, the Pipeline and Hazardous Materials Safety Administration, by telephone at 202-366-4400 or email at ahuva.battams@dot.gov.

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I. Civil Penalty Amendments

On June 30, 2016, PHMSA published an interim final rule, (81 FR 42564) in the Federal Register. Under the Pipeline Safety, Regulatory Certainty, and Job Creation Act of 2015 (the 2015 Act), Pub. L. 114-74, and consistent with the process outlined in the Office of Management and Budget's (OMB) Memorandum for the Heads of Executive Departments and Agencies: "Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015," M-16-06 (OMB Memorandum M-16-06), the interim final rule stated that PHMSA is revising references in its regulations to the maximum civil penalties for violations of Federal pipeline safety laws, or any PHMSA regulations or orders issued thereunder.

Pursuant to the 2015 Act, and consistent with the process outlined in the OMB memorandum titled "Memorandum for the Heads of Executive Departments and Agencies: implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015," M-17-11 (OMB Memorandum M-17-11), PHMSA is again revising references in these regulations to the maximum civil penalties for violations. Based on the cost-of-living adjustment multiplier for 2017, derived from the Consumer Price Index (CPI-U) for the month of October 2016

(not seasonally adjusted), a multiplier of 1.01636 was used to calculate updated maximum civil penalty amounts.

The revised penalties are as follows:

Violated Statute	CFR Citation	Current Maximum Civil Penalty	Revised Maximum Civil Penalty
49 U.S.C. 60101 et seq., and any regulation or order issued thereunder.	49 CFR 190.223(a)	\$205,638 for each violation for each day the violation continues, with a maximum penalty not to exceed \$2,056,380 for a related series of violations.	\$209,002 for each violation for each day the violation continues, with a maximum penalty not to exceed \$2,090,022 for a related series of violations.
49 U.S.C. 60103; 49 U.S.C. 60111	49 CFR 190.223(c)	A penalty not to exceed \$75,123 which may be in addition to other penalties under 40 U.S.C. 60101, et seq.	An administrative civil penalty not to exceed \$76,352, which may be in addition to other penalties assessed under 49 U.S.C. 60101, et seq.

49 U.S.C. 60129	49 CFR 190.223(d)	A penalty not to exceed \$1,194.	A penalty not to exceed \$1,214.
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The 2015 Act only applies to prospective penalties and does not retrospectively change any civil penalties previously assessed or enforced. Further, under the 2015 Act, PHMSA is required to publish annual inflation adjustments for each penalty levied under 49 U.S.C. 60101, et seq., in the Federal Register no later than January 15 of each year.

The 2015 Act does not alter PHMSA’s existing authority to assess penalties levied for violations under 49 U.S.C. 60101, et seq. Additionally, if future penalties or penalty adjustments are enacted by statute or regulation, PHMSA will not adjust these penalties for inflation in the first year after the penalties are in effect. PHMSA will apply new annual penalty levels to any penalties assessed on or after the date these new penalty levels take effect.

II. Justification for Final Rule

PHMSA is proceeding directly to a final rule without providing a notice of proposed rulemaking or an opportunity for public comment. This action is permitted, in part, because the 2015 Act directs PHMSA to adjust the civil monetary penalties in accordance with the schedule provided in the 2015 Act, notwithstanding the notice and public comment procedures in the Administrative Procedure Act (APA). However, PHMSA also notes that the APA authorizes agencies to forego providing the opportunity for prior public notice and comment if an agency finds good cause that notice and public procedure are “impracticable, unnecessary, or contrary to the public interest” (5 U.S.C

553(b)(3)(B)). In this instance, public comment is unnecessary because by making these technical amendments, PHMSA is not exercising discretion in a way that could be informed by public comment. PHMSA is required under the 2015 Act and directed by the OMB Guidance to publish this final rule by January 15, 2017, with the penalty levels stated herein slated to take effect on that date. Further, PHMSA is mandated by the 2015 Act and directed by the OMB Guidance to adjust the penalty levels pursuant to the specific procedures also stated herein. Any public comments received through notice and public procedure would therefore not affect PHMSA's obligation to comply with the 2015 Act, nor would they affect the methods used by PHMSA to adjust the penalty levels.

III. Rulemaking Analyses and Notices

A. Statutory/Legal Authority for this Rulemaking

This final rule is published under the authority of the 2015 Act, as well 49 U.S.C. 60101, et seq. These statutes provide PHMSA with the authority to levy civil penalties for violations of Federal pipeline safety laws. The 2015 Act requires penalties levied by Federal agencies pursuant to these laws to be adjusted. Beginning in January 2017, the 2015 Act requires such penalties to be adjusted on an annual basis no later than January 15 of each year.

B. Executive Orders 12866 and 13563, and Department of Transportation (DOT)

Regulatory Policies and Procedures

This final rule has been evaluated in accordance with existing DOT policies and procedures and determined to be non-significant under Executive Order 12866,

Regulatory Planning and Review, 58 FR 51735 (October 4, 1993), and Executive Order 13563, Improving Regulation and Regulatory Review, 76 FR 3821 (January 21, 2011). Consistent with guidance in OMB Memorandum M-17-11, this final rule is considered to be a non-significant regulatory action under Executive Order 12866. Further, this final rule is not significant under the regulatory policies and procedures of the DOT because it is limited to a ministerial act in which the agency has no discretion and where the economic impact of the final rule is minimal (44 FR 11034). Accordingly, preparation of a regulatory evaluation is not warranted.

This final rule imposes no new costs upon persons conducting operations in compliance with Federal pipeline statutes and regulations. Those operators not in compliance with these statutes and regulations may experience an increased cost based on the penalties levied against them for non-compliance; however, this is an avoidable, variable cost and thus is not considered in any evaluation of the significance of this regulatory action. The amendments in this final rule could provide a deterrent effect that could potentially lead to safety benefits; however, PHMSA does not expect such benefits to be significant. Overall, it is anticipated that costs and benefits from this final rule would be minimal in real dollars.

C. Executive Order 13132

PHMSA has analyzed this final rule according to Executive Order 13132 on Federalism, 64 FR 43255 (August 10, 1999). The final rule does not have a substantial direct effect on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of

government. The final rule neither imposes substantial direct compliance costs on State and local governments nor preempts state law governing intrastate pipelines. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

D. Executive Order 13175

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 on consultation and coordination with Indian tribal governments, 65 FR 67249 (November 9, 2000). Because the final rule does not have tribal implications, does not impose substantial direct compliance costs, and is required by statute, the funding and consultation requirements of Executive Order 13175 do not apply.

E. Executive Order 13211

This final rule is not a “significant energy action” under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use, 66 FR 28355 (May 22, 2001). It is not likely to have a significant adverse effect on supply, distribution, or energy use. Further, the Office of Information and Regulatory Affairs (OIRA) within OMB has not designated this final rule as a significant energy action.

F. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act, 5 U.S.C. 601-611, requires each agency to analyze proposed regulations and assess their impact on small businesses and other small entities to determine whether this final rule is expected to have a significant impact on a

substantial number of small entities. The provisions of this final rule may apply specifically to all businesses using pipelines to transport hazardous liquids, gas, and liquefied natural gas (LNG) in interstate commerce. Therefore, PHMSA certifies this final rule would not have a significant economic impact on a substantial number of small entities.

G. Paperwork Reduction Act

This final rule imposes no new requirements for recordkeeping or reporting.

H. Unfunded Mandates Reform Act of 1995

This final rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995, Pub. L. 104-4. It does not result in costs of \$100 million or more (adjusted for inflation) in any year for either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the final rule.

I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended, requires Federal agencies to consider the consequences of major Federal actions and prepare a detailed statement on actions significantly affecting the quality of the human environment (42 USC 4321 – 4375). When developing potential regulatory requirements, PHMSA evaluates those requirements to consider the environmental impact of these amendments. Specifically, PHMSA evaluates the risk of release and resulting environmental impact; the risk to human safety, including any risk to first responders; if the proposed regulation

would be carried out in a defined geographic area; and the resources, especially in environmentally sensitive areas, that could be impacted by any proposed regulations.

This final rule would be generally applicable to pipeline operators, and would not be carried out in a defined geographic area. The adjusted, increased civil penalties listed in this final rule may act as a deterrent to those violating Federal pipeline safety laws, or any PHMSA regulations or orders issued thereunder. This may result in a positive environmental impact as a result of increased compliance with Federal pipeline safety laws and any PHMSA regulations or orders issued thereunder. Based on the above discussion, PHMSA concludes there are no significant environmental impacts associated with this final rule.

J. Executive Order 13609 and International Trade Analysis

Under Executive Order 13609, Promoting International Regulatory Cooperation, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally, 77 FR 26413 (May 4, 2012). In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or would be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from

establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards so long as the standards have a legitimate domestic objective—such as providing for safety—and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, using them as the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public, and we have assessed the effects of this final rule to ensure that it does not cause unnecessary obstacles to foreign trade. Accordingly, this final rule is consistent with Executive Order 13609 and PHMSA's obligations.

K. Privacy Act

Anyone is able to search the electronic form of written communications and comments received into our dockets by the name of the individual submitting the document (or signing the document, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement, published on April 11, 2000 (65 FR 19476), in the Federal Register at:

<https://www.gpo.gov/fdsys/pkg/FR-2000-04-11/pdf/00-8505.pdf>.

L. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in the spring and fall of each year. The RIN

contained in the heading of this document can be used to cross-reference this action in the Unified Agenda.

M. Executive Order 13609 and International Trade Analysis

Sections 3 and 4 of Executive Order 13609 direct an agency to conduct a regulatory analysis and ensure that a proposed rule does not cause unnecessary obstacles to foreign trade. This requirement applies if a rule constitutes a significant regulatory action, or if a regulatory evaluation must be prepared for the rule. This interim final rule is not a significant regulatory action, but a regulatory action under Section 3(e) of Executive Order 12866. PHMSA is not required under Executive Orders 12866 and 13563 to submit a regulatory analysis.

List of Subjects in 49 CFR Part 190

Administrative practice and procedure, Penalties, Pipeline safety.

Accordingly, the interim rule amending 49 CFR part 190 which was published at 81 FR 42564 on June 30, 2016, is adopted as a final rule with the following changes:

PART 190- PIPELINE SAFETY ENFORCEMENT AND REGULATORY PROCEDURES

1. The authority citation for part 190 continues to read as follows:

Authority: 33 U.S.C. 1321(b); 49 U.S.C. 60101 et seq.; 49 CFR 1.97; Pub. L. 114-74, section 701; Pub. L. No: 112-90, section 2; Pub. L. 101-410, sections 4-6.

2. In § 190.223 paragraphs (a), (c), and (d) are revised to read as follows:

§ 190.223 Maximum penalties.

(a) Any person found to have violated a provision of 49 U.S.C. 60101, et seq., or any regulations or orders issued thereunder, is subject to an administrative civil penalty not to exceed \$209,002 for each violation for each day the violation continues, with a maximum administrative civil penalty not to exceed \$2,090,022 for any related series of violations.

* * * * *

(c) Any person found to have violated any standard or order under 49 U.S.C. 60103 is subject to an administrative civil penalty not to exceed \$76,352, which may be in addition to other penalties to which such person may be subject under paragraph (a) of this section.

(d) Any person who is determined to have violated any standard or order under 49 U.S.C. 60129 is subject to an administrative civil penalty not to exceed \$1,214, which may be in addition to other penalties to which such person may be subject under paragraph (a) of this section.

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Issued in Washington, DC, on April 24, 2017, under authority delegated in 49 CFR 1.97.

Howard W. McMillan,
Administrator.

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